

Commonwealth of Kentucky
Before the Public Service Commission

In the Matter of:

JOINT APPLICATION OF NUON GLOBAL,)
SOLUTIONS USA, BV, NUON GLOBAL) Case No. 2005-00433
SOLUTIONS USA, INC., AIG HIGHSTAR CAPITAL)
II, LP, HYDRO STAR, LLC, UTILITIES, INC. AND)
WATER SERVICE CORPORATION OF KENTUCKY)
FOR APPROVAL OF AN INDIRECT CHANGE IN)
CONTROL OF A CERTAIN KENTUCKY UTILITY)
PURSUANT TO THE PROVISIONS OF)
KRS 278.020(5) AND (6) AND 807 KAR 5:001(8))

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ATTORNEY GENERAL'S RESPONSE TO
JOINT APPLICANTS' MOTION FOR A REHEARING

The Attorney General submits this Response to Joint Applicants' Motion for a Rehearing of the Commission's 8 March 2006 Order.

AIG Highstar Capital II LP ("Highstar") is a limited partnership that owns 100% of Hydro Star, a "single purpose" entity created to purchase 100% of the shares of Nuon USA.¹ Highstar controls Hydro Star because it clearly has the power to direct the management or policies of Hydro Star. KRS 278.010 (19); compare with KRS 278.020(6)(For purposes of change in control proceedings, "control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility.")

¹ Joint Application, Numbered Paragraphs 4 and 5.

Indeed, it has at all times been clear that AIG Highstar is the entity that is acquiring Utilities, Inc., from Nuon.² It is equally clear that the “Highstar team (through Hydro Star) will provide financial and managerial support to the Utilities team in its management of Water Service.”³

With regard to Ordering Paragraph 10, Highstar, as the entity in control, should be made to commit to adequately fund, construct, operate, and maintain its utility. It is a reasonable and logical condition. With control comes responsibility. The Attorney General’s concern is that Hydro Star’s “single purpose” should not extend to insulating the actual owner and entity with control from accountability. Accordingly, he believes that the Commission’s condition is appropriate and should remain. The same position applies for Paragraph 8 of Appendix A to the 8 March 2006 Order.

The Attorney General takes no position for the Joint Applicants’ request relating to Ordering Paragraph 9 and Paragraph 6 of Appendix A to the 8 March 2006 Order.

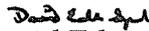
² Joint Applicants’ Response to Attorney General’s first Request for Information (Case No. 2005-00323), Item 9 (hereinafter styled “2005-00323, OAG 1 – 9”).

³ Joint Applicants’ Response to Public Service Commission First Data Request of Commission Staff, Item 1, page 2 of 4.

WHEREFORE, the Attorney General submits his Response.

Respectfully submitted,

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Certificate of Service and Filing

Counsel certifies filing of the original and ten photocopies of this Response to Joint Applicants' Motion for a Rehearing by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; furthermore, service of the filing was by mailing a true and correct of the same, first class postage prepaid, to Damon R. Talley, P. O. Box 150, Hodgenville, Kentucky 42748, all on this 23rd day of March 2006. (A copy in electronic format was also transmitted to Mr. Talley via electronic mail.)



Assistant Attorney General